

**Chairman David M. McIntosh**  
**Opening Statement**  
**Clinton-Gore v. State and Local Governments**  
**July 28, 1998**

First, if the ranking member will permit, let me take a minute to express my sorrow over the loss of our two Capitol Hill Police Officers, J.J. Chestnut and Detective John Gibson. Both officers were very kind to me. To their families, friends, fellow officers and to Majority Whip Tom Delay and his staff, our thoughts and prayers are with you.

The purpose of today's hearing is to examine the potential impacts of President Clinton's recent Executive Order (E.O.) 13083, "Federalism," on State and local governments, and examine the need for a possible legislative solution to address the concerns of State and local governments. This hearing will allow key State and local elected officials to voice their concerns and former and current Administrations to explain their views on the Federalism executive orders.

I want to welcome five State and local elected officials who represent key organizations of State and local officials. States governments will be ably represented today by Utah Governor Michael O. Leavitt who serves on the Executive Committee of the National Governors' Association (NGA), and North Carolina State Representative Daniel T. Blue, Jr. who is the new President of the National Conference of States Legislatures (NCSL).

The local government community will be well represented today by Philadelphia Mayor Edward Rendell who is representing the U.S. Conference of Mayors (USCM), Philadelphia Councilman Brian J. O'Neill who is President of the National League of Cities (NLC), and Wake County, North Carolina Commissioner Betty Lou Ward who is the new President of the National Association of Counties (NACO).

I also want to welcome our current and former Administration officials. Michael J. Horowitz, currently a Senior Fellow at the Hudson Institute, served as Chairman of the Domestic Policy Council Working Group on Federalism when he was General Counsel of the Office of Management and Budget during the Reagan Administration. Eugene Hickok, currently Secretary of Education of the Commonwealth of Pennsylvania, is here to speak as former Special Assistant, Office of Legal Counsel, U.S. Department of Justice during the Reagan Administration.

The Clinton Administration is represented by G. Edward DeSeve, who is Acting Deputy Director for Management at OMB. A former OMB official whose office falls within the line of authority under Mr. DeSeve is widely reported to have been the chief author of the Clinton executive order.

Finally, Vermont's Lieutenant Governor Douglas Racine and Councilman Mark Schwartz from Oklahoma City will also testify.

On May 14, 1998, President Clinton issued E.O. 13083 which revoked two earlier Federalism executive orders -- President Reagan's E.O. 12612 of 1987 and President Clinton's E.O. 12875 of 1993. E.O. 12612 provided many protections for State and local governments and reflected great deference to State and local governments. President Reagan, a former Governor, consistently recognized the competence of State and local governments and their readiness to assume more responsibility.

For example, prior to his E.O. 12612, President Reagan returned responsibility to State and local governments in his ten "block grant" programs. In his 1982 State of the Union Address, he announced a Federalism Initiative involving a grand sorting out of responsibilities between the federal government and State and local governments. Later in 1982, he issued E.O. 12372, which required federal agencies to "accommodate State and local elected officials' concerns" with proposed federal financial assistance and direct federal development or explain why not. That executive order, and E.O. 12612, issued in 1987, set in place operating principles and a required discipline for the federal agencies to follow for all decision-making affecting State and local governments.

When I discovered President Clinton's executive order, I wrote President Clinton that "I could not understand how [he], as a former Governor, could willingly abandon the protections accorded the states since 1987 from unwarranted federal regulatory burdens." I explained that, prior to his new order, there had been "important constraints on federal regulatory power by requiring a minimum of federal intrusion and substantial deference to state governance." I wrote, "With E.O. 13083, you have swept away these limitations on the power of the federal government." The bottom line is that the new order would wreak havoc on the balance of power envisioned by the Constitution between the States and the federal government. I simply asked "why."

I asked why the President stripped the most basic protection accorded the States -- the preparation of a Federalism Assessment for all regulatory and legislative proposals, including the requirement for an analysis of "the extent to which the policy imposes additional costs or burdens on the states, including the likely source of funding for the states and the ability of the states to fulfill the purposes of the policy."

I also asked why the President openly encouraged federal agencies to intrude in State affairs, which could subject the States to unprecedented federal regulatory intervention. President Clinton's order revokes President Reagan order's preemption provisions that directed agencies to "preempt State law only when the statute contains an express preemption provision or there is some other firm and palpable evidence compelling the conclusion that the Congress intended preemption of State law, or when the exercise of State authority directly conflicts with exercise of Federal authority under the Federal statute" (emphasis added). Also, under President Reagan's executive order, any regulatory preemption of State law was restricted to the minimum level necessary. That protection no longer exists.

Since that time, I have also asked for all relevant documents from the Office of Management and Budget relating to the development, preparation, and issuance of the executive order.

On July 1st, Counsel to the President Charles F.C. Ruff replied for the President. He stated that "[t]he primary purpose in issuing the Order was to bring the previous orders up to date." According to Mr. Ruff, the Unfunded Mandates Reform Act (UMRA) of 1995 made clear that a federalism assessment was necessary only when a regulation may result in expenditures by State, local, and tribal governments in the aggregate of \$1 00,000,000 or more. President Reagan's order set no threshold for a federalism assessment, and a \$100 million threshold would exclude most regulations that affect State and local governments.

On June 10th, my Subcommittee called NGA to ascertain NGA's views of the new executive order. Shockingly, NGA's Executive Director Raymond Scheppach was totally unaware of the order. Apparently, the Clinton White House had neither consulted with any of the seven principal State and local government organizations (the Big 7) prior to issuance of the new order nor notified them about it after its issuance.

We understand that, after our call to NGA, each of the Big 7 organizations complained to the Clinton White House about the failure to consult with them, as well as about the substance of the new order. As a consequence, the White House Counsel informed us by telephone on July 15th that the Administration planned to issue a second executive order delaying the effective date.

On July 17th, leadership of the Big 7 -- NGA Chairman Ohio Governor George V. Voinovich, the former NCSL President, NLC President Brian O'Neill (who is with us today), the former NACO President, the President of the USCM, the President of the International City/County Management Association (ICMA), and the Chairman of the Council of State Governments (CSG) -- wrote the President requesting that the new order be withdrawn, saying, "we feel that Executive Order 13083 so seriously erodes federalism that we must request its withdrawal," and they requested its withdrawal "as quickly as possible."

Today, we plan to explore with the President's representative several questions which the American people deserve to have answered:

- Why was there no prior consultation with State and local elected officials and the Big 7 organizations that represent them?
- Why was there no notice after issuance to State and local elected officials and the Big 7?
- Why was the order issued in the first place?
- Will the President act to restore the protections afforded by the Reagan and earlier Clinton executive orders for State and local governments before the November elections?

The stealth issuance of the Clinton executive order and its assertion of federal authority over the State and local governments makes clear that we must always be alert to ensure the proper balance of power between the federal government and State and local governments. As James Madison wrote in Federalist No. 45, “The powers delegated ... to the Federal government are defined and limited. Those which are to remain in the State governments are numerous and indefinite.”